

another and materially different process, for example, an etching process."

(emphasis added) Irrespective of the contentions by the Examiner, applicant's note that the process claims of Invention I as represented by claims 1 - 4 are in terms of a "method for processing a sample" (emphasis added), without defining any type of "processing". Similarly, the apparatus claims of Invention II of claims 5 - 10 are in terms of an "apparatus for processing a sample" (emphasis added) or a "plasma processing apparatus control system" (emphasis added), without defining any type of "processing". Thus, the Examiner's contention for distinctness relating to "etching" process is not based upon the claimed features of Inventions I and II, such that the Examiner has failed to properly show distinctness in accordance with the requirements of MPEP §806.05(e). Applicants note that the method claims of Invention I and the apparatus claims of Invention II are considered to be coextensive with one another, such that applicants submit that the requirement for restriction, as set forth by the Examiner is improper and should be withdrawn.

In order to provide a complete response to the restriction requirements, applicants provisionally elect, with traverse, Invention II including claims 5 - 10.

For the foregoing reasons, applicants request withdrawal of the restriction requirement and favorable action with respect to all claims present in this application.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli,

Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 501.43537X00),  
and please credit any excess fees to such deposit account.

Respectfully submitted,

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